Supreme Court, U.S.
FILED
DEC 19 2003
OFFICE OF THE CLERK

(7)

No. 02-1684

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL YARBOROUGH, Warden of California State Prison-Los Angeles, County,

Petitioner

v.

MICHAEL ALVARADO,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief of Juvenile Law Center, Children and Family Justice Center, Juvenile Justice Project of Louisiana, Legal Services for Children, Mexican American Legal Defense and Educational Fund, National Council of La Raza, Public Defender Service for the District of Columbia, San Francisco Public Defender's Office, Southern Center for Human Rights, Youth Law Center; Hon. David B. Mitchell; and 13 professors representing the fields of law, psychiatry, and psychology as *AMICI CURIAE* In Support of Respondent

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INTEREST OF THE *AMICI*[1]

The organizations and individuals submitting this brief work with and on behalf of adolescents in a variety of settings. Some provide direct representation to minors who become involved in the juvenile justice and child welfare systems. Some work to create laws and policies that promote the fair treatment and well-being of youth in these systems. Others are psychologists, psychiatrists, and law professors with expertise in adolescent development and its relevance to the law. They join in this brief to assert that law enforcement officials must take into account age and lack of experience with the justice system in assessing whether a reasonable youth would believe he was in custody during police interrogation.

IDENTITY OF THE *AMICI*[2]

Juvenile Law Center; Children and Family Justice Center; Juvenile Justice Project of Louisiana; Legal Services for Children; Mexican American Legal Defense and Educational Fund; National Council of La Raza; Public Defender Service for the District of Columbia; San Francisco Public Defender's Office; Southern Center for Human Rights; Youth Law Center; the Honorable David B. Mitchell; and Professors Marie Banich, Jeffrey Fagan, Barry Feld, Martin Guggenheim, Randy Hertz, Paul Holland, Alan M. Lerner, Wallace Mlyniec, Edward P. Mulvey, Catherine J. Ross, Elizabeth Scott, Annie Steinberg, Laurence Steinberg.

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[1] *Amici* file this brief with the consent of all parties. Letters of consent have been lodged with the Clerk of Court. No counsel for a party authored this brief in whole or in part. No person or entity, other than *amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

[2] A brief description of each of the organizations and individuals listed herein appears at Appendix A.

STATEMENT OF FACTS

Amici adopt the statement of facts as articulated in the brief of Respondent, Michael Alvarado [hereinafter Michael].

SUMMARY OF ARGUMENT

The United States Court of Appeals for the Ninth Circuit correctly considered Michael's age and lack of experience with the criminal justice system in determining whether Michael was in custody during police interrogation. This Court cannot reverse the Ninth Circuit's decision without repudiating more than 60 years of its own jurisprudence that has consistently recognized the developmental differences between minors and adults in articulating and defining the scope of their legal and constitutional rights. Importantly, a reversal in this case would excuse law enforcement officers from considering the objectively knowable facts of youth and inexperience in assessing whether a minor is in custody for the purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966) in all cases involving minors – *whether the youth is 17, 15, 12, 10 or 8 years-old.* Such a result would run contrary to the very rationales behind this Court's holding in *Miranda*.

This Court's reliance on the developmental and situational differences of youth is manifest in its holdings in children's rights cases over the last 60 years. In the Fifth Amendment context, this Court's requirement that special precautions and procedures adhere when minors are interrogated is based squarely on its findings that minors are generally less mature, more submissive in the face of police authority, and lack critical knowledge and experience, as compared to adults. Under the Fourth Amendment, minors' rights have been diminished as this Court has pronounced that minors are "always in some form of custody"and they lack the right to come and go at will. Decisions construing minors' rights under other constitutional provisions likewise endorse either greater

protections or more limited rights based upon minors' distinct developmental characteristics. Lastly, a myriad of state statutes and case law treat minors differently across a number of domains, mirroring the legal boundaries between adults and children so solidly established by this Court.

Scholarly research in the field of adolescent development confirms the developmental and social differences upon which these longstanding legal distinctions are based. This scholarship tells us that a number of "psychosocial factors" impact adolescent perceptions, judgment and decision-making and limit their capacity for autonomous choice. These psychosocial factors include present-oriented thinking, egocentrism, less experience and greater vulnerability to stress and fear than adults, and greater conformity to authority figures. More recent research into the structure and function of the adolescent brain further supports these findings. Together, the psychological and neurological research explain why a reasonable juvenile will have a lower threshold for believing that he is in custody as compared to a reasonable adult, and why Michael would not have felt he was free to leave the interrogation room at the police station.

Finally, Petitioner's argument that affirmance of the Ninth Circuit's decision would additionally burden law enforcement officials is completely without merit. Pursuant to a broad patchwork of federal, state and local laws, police officers must routinely determine whether individuals are minors and then take certain actions in response to this knowledge. Petitioner's argument is all the more specious in this case, where law enforcement readily acknowledged Michael's juvenile status and, rather than contact Michael directly, asked his parents to bring him to the station.

ARGUMENT

I. UNITED STATES SUPREME COURT JURISPRUDENCE, AS WELL AS STATE STATUTES AND CASE LAW, CONSISTENTLY TAKE ACCOUNT OF THE DEVELOPMENTAL DIFFERENCES BETWEEN MINORS AND ADULTS IN DETERMINING MINORS' CONSTITUTIONAL AND LEGAL RIGHTS

A. This Court Has Historically Viewed Minors' Constitutional Rights Through a Discrete Lens, Extending Greater Protections or Fewer Rights To Minors Based Upon Their Distinctive Developmental and Social Characteristics

That minors are "different" is a principle that permeates our law. As Justice Frankfurter so aptly articulated, "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state's duty towards children." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring). Accordingly, this Court has consistently considered the developmental and social differences of youth in measuring the scope and breadth of minors' constitutional rights for the last sixty years.[3] The Ninth Circuit's holding that Michael's juvenile status was relevant to

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[3] Further, the Court's legal decisions with respect to minors establish the age of majority as the all-important line between childhood and adulthood. Almost all states set the age of majority at age eighteen, although some states (i.e., Alabama and Nebraska) set it at age nineteen. J. Shoshanna Ehrlich, *Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents*, 18 WIS. WOMEN'S L.J. 77, 78 n.1 (2003)

the determination of whether he was 'in custody' for *Miranda* purposes falls squarely within this jurisprudential framework.

For example, in cases involving related law enforcement issues, this Court has demarcated a legal distinction between minors and adults for the purpose of determining the voluntariness of juvenile confessions during custodial interrogation. Thus, the Court has recognized that minors are generally less mature than adults and, therefore, are more vulnerable to coercive interrogation tactics. As the Court first recognized in *Haley v. Ohio*, 332 U.S. 596 (1948), in suppressing the statement of a fifteen-year old defendant taken outside of the presence of his parents, a teenager

> cannot be judged by the more exacting standards of maturity. *That which would leave a man cold and unimpressed can overawe and overwhelm a lad…* [W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.

Haley at 599-600 (emphasis added).

The Court also has noted that minors generally lack critical knowledge and experience, and have a lesser capacity to understand, much less exercise, their rights when they are "made accessible only to the police." *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (finding statement taken from a 14 year-old boy outside of his parent's presence to be involuntary.) And in *In re Gault*, 387 U. S. 1, 55 (1967), where the Court extended many key constitutional rights to minors subject to delinquency proceedings in juvenile court, the Court reiterated its earlier concerns about youth's special vulnerability: "The greatest care must be taken to assure that [a minor's] confession was

voluntary, in the sense that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."

More recently, in this Court's *per curiam* decision in *Kaupp v. Texas*, 538 U.S. 626, 123 S.Ct. 1843 (2003), where it held a 17-year-old's confession must be suppressed following an illegal arrest (absent undisclosed intervening evidence in the record) under the Fourth and Fourteenth Amendments, this Court applied earlier precedents in considering the defendant's status as a 17-year-old in its analysis:

> A *17-year-old boy* was awakened in his bedroom at three in the morning by at least three police officers, one of whom stated "we need to go and talk." .... [The boy's] 'Okay' in response to Pinkins's statement is no showing of consent under the circumstances. *Pinkins offered [the boy] no choice, and a group of police officers rousing an adolescent out of bed in the middle of the night with the words 'we need to go and talk' presents no option but 'to go.'* There is no reason to think [the boy's] answer was anything more than 'a mere submission to a claim of lawful authority.'

538 U.S. at ____, 123 S. Ct. At 1846-47 (emphasis added)(citations omitted).

The Court's holdings in the above-cited cases that minors, in comparison with adults, are generally less mature, more submissive in the face of police authority, and lack critical knowledge and experience, presage the Ninth Circuit's conclusion that a reasonable juvenile in the circumstances in which Michael found himself might *not* have believed that he was free to leave the police station. The Court's findings also confirm that these developmental and situational differences, which are well documented in academic research, *see Part II infra,* are objectively knowable facts about adolescence and, therefore, appropriately considered when determining whether a youth was 'in custody' during interrogation.

This Court's more protective stance toward youth in confession cases parallels its distinctive view of children and adolescents in other settings. In the school environment, for example, this Court has repeatedly accorded youth a more restricted liberty interest in their persons and possessions under the Fourth Amendment. The Court has upheld the constitutionality of warrantless searches by school officials of students' belongings upon reasonable suspicion that a student has violated school rules or the law, *New Jersey v.T.L.O.*, 469 U.S. 325, 341-42 (1985); upheld random, suspicionless drug testing of student athletes, *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 654 (1995); and upheld random, suspicionless drug testing of students engaged in extracurricular activities, *Board of Ed. of Ind. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 838 (2002).

In support of these rulings, the Court has noted, "[t]raditionally at common law, and still today, *unemancipated minors lack some of the most fundamental rights of self-determination* – including even the right of liberty in its narrow sense, *i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians.*" *Vernonia,* 515 U.S. at 654 (emphasis added) (citation omitted). This echoes the Court's earlier declaration in *Schall v. Martin*, 467 U.S. 253, 265 (1984), in explaining the rejection of a constitutional challenge to the preventive detention of juveniles charged with delinquent acts, that *"juveniles, unlike adults, are always in some form of custody.* Children, by definition, are not assumed to have the capacity to care for themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae...*" (emphasis added) (citations omitted). *Cf. Vernonia,* 513 U.S. at 655 (when parents place their children in school they delegate custodial power to the

latter, permitting the school a degree of supervision and control over their children that could not be exercised over free adults); *T.L.O.*, 469 U.S. at 339 (same).

Decisions regarding constitutional provisions other than the Fourth and Fifth Amendments likewise demonstrate this Court's persistent view that children are simply different than adults under the Constitution. Thus, for example, this Court has emphasized the juvenile court's core principles of individualized rehabilitation and treatment, noting that youth, because they are still *malleable* and in development, are more amenable to such rehabilitative interventions than adults. *McKeiver v Pennsylvania*, 403 U.S. 528, 540 (1971); *Gault*, 387 U.S. 1, 15-16 (1967). *See also* Barry C. Feld, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 92 (1999) (noting that the malleability of youth is central to the rehabilitative model of the juvenile court).[4]

Moreover, in a series of cases involving state restrictions on minors' abortion rights, this Court has also made legal distinctions between minors and adults, and found that "during the formative years of childhood and adolescence, *minors often lack . . . experience, perspective, and judgment*," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (emphasis added), as well as "the ability to make fully informed choices that take restrictions on minors' abortion rights, this Court has also made legal distinctions between minors and adults, and found that "during the formative years of childhood and adolescence, *minors often lack . . . experience, perspective, and judgment*," *Bellotti v.*

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[4] The Court's premises with respect to malleability finds ample support in the developmental literature. *See* Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court* in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 9,23 (Thomas Grisso and Robert Schwartz eds., 2000) (noting that adolescence is a period of "tremendous malleability" and "tremendous plasticity in response to features of the environment.") [hereinafter Steinberg and Schwartz, Developmental Psychology] .

Baird, 443 U.S. 622, 635 (1979) (emphasis added), as well as "the ability to make fully informed choices that take account of both immediate and long-range consequences." *Id.* at 640; *see also Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) ("The State has a strong and legitimate interest in the welfare of its young citizens, whose *immaturity, inexperience, and lack of judgment* may sometimes impair their ability to exercise their rights wisely.") (emphasis added). For this reason, the Court has held that states may choose to require that minors consult with their parents before obtaining an abortion. *See Hodgson*, 497 U.S. at 458 (O'Connor, J., concurring in part) (noting that liberty interest of minor deciding to bear child can be limited by parental notice requirement, given that immature minors often lack ability to make fully informed decisions); *Bellotti*, 443 U.S. at 640 (noting that because minors often lack capacity to make fully informed choices, the state may reasonably determine that parental consent is desirable).[5]

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[5] The Court has held, however, that state legislatures may not enact statutes giving parents an absolute veto power over a minor's decision to obtain an abortion. *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) (invalidating state statute requiring that unmarried minors obtain parental consent for abortions). A state statutory scheme also must provide an alternative procedure which allows the juvenile to procure authorization for the abortion from the State without complying with the parental-notification and/or consent requirements, upon a showing that she is mature and informed enough to make the decision regarding the abortion independently from and without the consent of her parents. *Bellotti*, 443 U.S at 642-44. Alternatively, the court may find that the abortion is in the minor's best interest even if she is not able to make an independent decision. *Id.*

Thus, in the abortion context, the Court has drawn a distinction among the requirements that a state may impose on an immature versus a mature juvenile. As one commentator has observed, the Court has made this distinction because any interest the state has in protecting immature minors in the abortion context "is satisfied by their very maturity." *See* Catherine Grevers Schmidt, Note, *Where Privacy Fails: Equal Protection and the Abortion Rights of Minors*, 68 N.Y.U. L. REV. 597, 635 (1993). *See also Bellotti* at 642 (striking down a parental veto statute to avoid the

Similarly, in *Parham v. J.R.*, 442 U.S. 584 (1979), this Court rejected a constitutional challenge to Georgia's civil commitment scheme that authorized parents and other third parties to involuntarily commit children under the age of eighteen. In curtailing children's liberty interests in this context, the Court noted that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions...." *Id.* at 603.

This Court also has distinguished children from adults under the First Amendment. In *Ginsburg v. New York*, 390 U.S. 629, 637 (1968), the Court upheld a state statute restricting the sale of obscene material to minors. Such a restriction was permissible for youth, as compared to adults, because *"a child – like someone in a captive audience – is not possessed of that full capacity for individual choice* which is the presupposition of First Amendment guarantees." *Id.* at 649-50 (Stewart, J., concurring) (footnotes omitted) (emphasis added). *See also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (holding that public school authorities may censor school-sponsored publications). Similarly, the Court has upheld a state's right to restrict when a minor can work, on the premise that "[t]he state's authority over children's activities is broader than over the actions of adults." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944).

In sum, in an unbroken line of decisions extending more than half a century, this Court has distinguished minors from adults under the law, noting that minors are, *inter alia*, (1) always in someone's custody and not at liberty to come and go at will; (2) less mature; (3) deficient in judgment and perspective; (4) more susceptible to the appearance or assertion of authority; (5) less able to think rationally in stressful situations; (6) less experienced and thus less knowledgeable; and (7) more malleable. Viewing Michael's claims against this historic backdrop, the Ninth Circuit correctly held that Michael's youth, lack of experience, and submission to parental authority were all part of the calculus to be undertaken by state courts in determining whether Michael was in custody, such that the detective was legally obligated to advise him of his rights under *Miranda v. Arizona,* 384 U.S. 436 (1966).

Moreover, under the facts of this case it is beyond argument that his age was not only objectively knowable to the detective who questioned him, it was considered by the detective in getting him to the police station in the first instance. The detective did not contact Michael directly; instead, the detective contacted Michael's parents (both at home and at his mother's place of employment) and told them that they needed to bring Michael to the police station for questioning. This was a clear acknowledgment that Michael was subject to the authority and control of the adults around him. In like form, at the conclusion of the interrogation, the detective did not tell Michael that he was free to go; instead, the detective told Michael that she would escort him back to his parents.

The facts of this case also demonstrate that it was an objectively knowable fact that Michael, as a minor, knew that he did not have the freedom to come and go at will. The detective denied Michael's request and his parents' request (in Michael's presence) to accompany Michael into the interview room. Michael's parents did not challenge the authority of the detective to exclude them from the interrogation and instead submitted to

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"grave and indelible" consequences of unwanted motherhood upon mature minors who are capable of rationally considering the alternatives).

Amici are not suggesting that police in interrogations engage in the same type of line drawing between mature and immature minors that courts undertake in the abortion context. Quite the contrary, *amici* contend that because these Court's findings, as confirmed by the development scholarship cited in Part II *infra*, are that *on average* adolescents are less mature than adults and lack critical experience, perspective and judgment, a *reasonable juvenile* will have a lower threshold for believing that he is in custody.

the detective's authority. Once Michael was separated from his parents, the detective never told Michael that he was free to leave or that he could speak to his parents at any time if he so desired. It was thus objectively knowable to the officer that a reasonable minor in Michael's position would have believed that, at that point in time, he was no longer in his parents' physical custody but rather in the detective's custody. *See also J.J.C.*, 689 N.E. 2d 1172, 1180 (Ill. App. Ct. 1998) ("when a juvenile's parents are present [at the police station], request to confer with their child, and are effectively refused by law enforcement authorities, the presumption arises that the juvenile's will is overborne.")

B. State statutes and case law routinely treat minors and adults differently based on age

The same developmental differences that have figured so prominently in this Court's jurisprudence are the basis for the many legal distinctions found in state laws concerning minors:

> [T]he experience of mankind, as well as the long history of our law, recognize[s] that there *are* differences which must be accommodated in determining the rights and duties of children as compared with those of adults. Examples of this distinction abound in our law: in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office.

Goss v. Lopez, 419 U.S. 565, 590-91 (1975) (Powell, J. dissenting) (emphasis in original). These legal distinctions cross a number of domains.

For example, following this Court's decisions in *Haley, Gallegos* and *Gault*, jurisdictions have implemented special protections for minors subject to interrogation by the police.

Many states impose additional obligations on law enforcement officials before interrogating a minor, including mandating that a juvenile's parent/guardian, legal custodian or attorney be present during questioning, or at the very least that the minor be given the opportunity to consult with a parent/guardian or attorney before waiving his rights. *See citations listed in Part III, infra.* Other courts equate a minor's request to contact a parent prior to or during interrogation as an invocation of the privilege against self-incrimination, such that police questioning must cease. *See People v. Burton*, 491 P.2d 793, 6 Cal. 375, 383-84 (Cal. 1971); *People v. Castro*, 462 N.Y.S.2d 369, 380-81 (1983). And in at least in one state, police must use a simplified version of Miranda warnings for juveniles. *State v. Benoit*, 490 A.2d 295, 304 (N.H. 1985).

State courts also have recognized the developmental differences between children and adults in contexts other than the justice system. Thus, courts have established the "infancy doctrine," which allows minors to avoid or disaffirm contracts in order to protect them, because minors are generally "immature in both mind and experience" and need to be protected from their own "bad judgment" as well as from adults who would take advantage of them. *Kiefer v. Fred Howe Motors, Inc.*, 158 N.W.2d 288, 290 (Wisc. 1968). *See also Halbam v. Lemke*, 298 N.W.2d 562, 567 (Wisc. 1980); *Statler v. Dodson*, 466 S.E.2d 497, 503 (W.Va. 1995); *Pankas v. Bell*, 198 A.2d 312, 315 (Pa. 1964).

In assessing negligence for the commission of torts, courts generally have held that the "reasonable person" test must be modified to consider the "objective standard of a reasonable person of like age, intelligence and experience under like circumstances." David Seildon, *Reasonable Expectations and Subjective Standards in Negligence Law: the Minor, the Mentally Impaired, and the Mentally Incompetent*, 50 GEO. WASH. L. REV. 17, 20 (1981); Speiser, Krause, Gans, AMERICAN LAW OF TORTS, Vol. 2, § 5:16 (1993); James Fleming, Jr., *The Qualities of the Reasonable Man in Negligence Cases*, 16 MO.

L. REV. 1, 16 (1951); *Ackerman v. Advance Petroleum Transport*, 7. N.W. 2d 235, 239 (Mich. 1942); *Frazier v. Northern Pac. Ry.*, 28 F. Supp. 20, 24 (Idaho 1939); *Alabama Power Co. v. Taylor*, 306 So. 2d 236, 250 (Ala. 1975); *Beekman Estate v. Midonick*, 252 N.Y.S.2d 885, 887 (N.Y. 1964); *Clark v. Circus-Circus, Inc.*, 525 F.2d 1328, 1331 (9th Cir. 1975); *DeLuca v. Bowden*, 329 N.E. 2d 109, 111 (Ohio 1975).

Accordingly, when teenagers are involved in dangerous activities courts have been careful to use the youth's age as a determining factor in assessing the reasonableness of their conduct. *See, e.g., Purtle v. Shelton*, 474 S.W.2d 123, 125 (Ark. 1971) (conduct of seventeen-year-old involved in gun accident assessed through a "reasonable child" standard); *Newman v. Crawford Construction Co.*, 799 S.W.2d 531, 532 (Ark. 1990) (holding fourteen-year-old to a child standard of care when conduct led to an injury on a construction site); *Goss v. Allen*, 360 A.2d 388, 391 (N.J. 1976) (providing that seventeen-year-old in skiing accident should be held to a standard of care appropriate for a minor because he had not yet reached the age of majority).[6]

Additionally, state legislatures have enacted laws establishing minimum ages for a wide range of life's activities, including marriage, driving, purchasing alcoholic beverages, and compulsory school attendance. See *State Age Requirements for Various Activities*, posted on Juvenile Law Center's website at www.jlc.org/agerequirements. (For the Court's reference, a copy of the website listing also is attached at Appendix B.)

Courts also have upheld legislative restrictions on minors' liberty in the form of juvenile curfews. Generally,

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[6] The operation of motor vehicles, because it has been deemed to be an adult activity, is the one general exception to the "reasonable minor" test. *See, e.g., Wagner v. Shanks*, 194 A.2d 701 (Del. 1963) (minor driving a car); *Goodfellow v. Coggbern*, 560 P.2d 873 (Idaho 1977) (adolescent in tractor accident); *McIntyre v. McIntyre*, 588 S.W.2d 836 (Tenn. 1977) (minor driving motorcycle).

juvenile curfews have been upheld based upon the findings of this Court that juveniles are not free to come and go at will and, instead, are always in someone's custody. *See note 16 infra.* And as described further in *Part III infra*, enforcement of teen curfews is among the array of police activities that require officers to routinely determine whether an individual is a minor and to take special actions that would be inapplicable to adults in like circumstances.

II. SCHOLARLY RESEARCH SUPPORTS THE NINTH CIRCUIT'S HOLDING THAT MICHAEL'S JUVENILE STATUS MUST BE CONSIDERED IN DETERMINING WHETHER, UNDER THE TOTALITY OF THE CIRCUMSTANCES, A REASONABLE PERSON IN MICHAEL'S POSITION WOULD HAVE FELT FREE TO TERMINATE THE INTERVIEW AND LEAVE THE INTERROGATION ROOM

The Ninth Circuit's holding, that Michael's juvenile status was relevant to the determination of whether a reasonable person in his position would have felt free to terminate the interrogation, is consistent with settled research that children and adolescents are developmentally distinct from adults in critical areas pertinent to this inquiry.

Developmental psychologists have long recognized that adolescence is a period of major development across many domains, including the realm of cognition. During the teenage years, youth begin to develop the abilities to abstract, to think of the possible (including alternative possibilities) and not just the real, and to form and test hypotheses about the world around them. Stanley I. Greenspan & John F. Curry, *Extending Piaget's Approach to Intellectual Functioning*, in 1 COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 402, 406-07 (Harold I. Kaplan & Benjamin J. Sadock eds., 7th ed. 2000) (providing an overview of Jean Piaget's cognitive development model, which remains an important theoretical work in the child development field).[7] These cognitive capacities progressively

[7] *See also* KIDS ARE DIFFERENT: HOW KNOWLEDGE OF ADOLESCENT DEVELOPMENT THEORY CAN AID DECISION-MAKING IN COURT 7 (L. Rosado ed., 2000) [hereinafter KIDS ARE DIFFERENT]; Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY

become part of an adolescent's repertoire; however, this development rarely follows a straight line during adolescence, as periods of progress alternate with periods of regression. Steinberg & Schwartz, *Developmental Psychology* at 24.

Developmental psychologists also recognize that adolescents do not utilize these developing cognitive capacities consistently over time or across a variety of situations. Other non-cognitive, "psychosocial factors," including the external environment, impact adolescent perceptions, judgment and decision-making and limit their capacity for autonomous choice. Elizabeth Cauffman and Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325, 327-29 (Thomas Grisso & Robert G. Schwartz eds., 2000).[8] As one developmental psychologist has observed, "During the time these processes are developing, it doesn't make sense to ask the average adolescent to think or act like the average adult, because he or she can't – any more than a six-year-old child can learn calculus." Laurence Steinberg, *Juveniles on Trial*, 18 CRIM. JUST. 20, 22 (Fall 2003). These psychosocial factors, described in more detail below, explain why a reasonable juvenile will have a lower threshold for believing that she is in custody as compared to a reasonable adult. Specifically, they confirm why

137, 157 (1997) [hereinafter Scott & Grisso, *The Evolution of Adolescence*]; R. Murray Thomas, COMPARING THEORIES OF CHILD DEVELOPMENT 273-318 (3d ed. 1992); Committee on Child Psychiatry, Group for the Advancement of Psychiatry, *How Old is Old Enough? The Ages of Rights and Responsibilities* 20-35 (1989) [hereinafter *GAP*].

[8] *See also* KIDS ARE DIFFERENT at 8-10; Scott & Grisso, *The Evolution of Adolescence* at 157, 161-64; Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision-Making*, 20 LAW & HUM. BEHAV. 249, 250 (1996) [hereinafter Steinberg & Cauffman, *Maturity of Judgment*); Elizabeth S. Scott *et al.*, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 222-23 (1995) [hereinafter Scott, *Evaluating Adolescent Decision Making]; GAP* at 28 .

a reasonable juvenile in Michael's shoes would have concluded that he was not free to leave the interrogation room at the police station.

To begin, adolescents have a different perception of time as compared to adults. Adolescents exhibit present-oriented thinking and have difficulty thinking beyond the present. Generally, they seem unable to think about the future or they discount it. Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 17 (Summer 1999) [hereinafter Beyer, *Recognizing the Child*].[9] Another aspect of adolescent thinking is egocentrism, which is an intense self-consciousness that leads teenagers to believe that others are constantly watching and evaluating them. David Elkind, *Egocentrism in Adolescence*, 38 CHILD. DEV. 1025, 1029-30 (1967); KIDS ARE DIFFERENT at 9. Egocentrism interacts with an adolescent's present-oriented thinking to lead an adolescent to only see the difficult circumstances which s/he is currently facing and not see beyond into the future. KIDS ARE DIFFERENT at 9. Consequently, a reasonable youth in Michael's shoes, who was interrogated in the absence of a parent in a police station for 2 ½ hours, would have difficulty seeing past the time that he was confined to the interview room and being questioned by police, to a point in time when he would be free to leave. A reasonable juvenile would likely feel the scrutiny of the police officers more intensely than an adult.

Moreover, it cannot be emphasized enough that the utilization of cognitive skills is context-specific during adolescence. Kurt W. Fischer *et al.*, *The Development of Abstractions in Adolescence and Adulthood*, in BEYOND FORMAL OPERATIONS: LATE ADOLESCENT AND ADULT COGNITIVE DEVELOPMENT 43, 57 (Michael L. Commons *et al.* eds., 1984); *GAP* at 34. For example, stress and fear greatly

[9] *See also* KIDS ARE DIFFERENT at 9; Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 591-92 (2000); Scott & Grisso, *The Evolution of Adolescence* at 164.

impact adolescent cognition; in stressful situations, adolescents often will not use the highest level of cognitive reasoning of which they may be capable in non-stressful scenarios. Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 Crim. Just. 27, 27 (Summer 2000) [hereinafter Beyer, *Immaturity*]; *Kids are Different* at 10; Fischer at 70. Youth simply have less experience, including interpersonal experience, to draw on than adults, and so on average they have a lesser capacity to respond and react in new and stressful situations. Steinberg & Schwartz, *Developmental Psychology* at 26.[10] Adolescents also generally process information less effectively than adults and instead exhibit "either-or" thinking, again particularly when under stress. Adolescents will typically perceive only one option when adults in similar situations would see multiple possibilities. Beyer, *Immaturity* at 27; Beyer, *Recognizing the Child* at 17-18.

This tendency to engage in either-or thinking also affects adolescents' interactions with others. An important developmental "task" of adolescence is "negotiating about power and control in the context of changing relationships with peers and parents." Scott, *Evaluating Adolescent Decision Making* at 230 (citations omitted). But in the process of forming more complex relationships with adults, adolescents regress; teenagers will "polarize" their characterization of adults, or overgeneralize or stereotype a trait in a particular person, instead of seeing people as having mixed motives or agendas. Peter Blos, THE ADOLESCENT PASSAGE: DEVELOPMENTAL ISSUES 152, 156 (1979); Howard Lerner, *Psychodynamic Models* in HANDBOOK OF ADOLESCENT PSYCHOLOGY 53, 66 (Vincent B. Van Hasselt & Michel Hersen eds., 1987) (citation omitted); Robert L. Selman, THE GROWTH OF INTERPERSONAL UNDERSTANDING: DEVELOPMENTAL AND CLINICAL ANALYSES

[10] *See also* Scott & Grisso, *The Evolution of Adolescence* at 164; Scott, *Evaluating Adolescent Decision Making* at 224-27; *GAP* at 30.

134 (1980). Thus, a teenager confined to an interrogation room by a police officer who denied both his and his parents' requests that his parents accompany him during the interview would likely view that officer in "polarized terms," i.e., as an authority figure who controls his movements. The teenager would be less likely to consider that the officer may *not* have the authority to hold him or has other motives for questioning that are not adverse to the minor's interests. In this stressful situation and given a lack of experience, a youth is more likely to see only one option – remaining in the interrogation room until he tells the officer the information the officer is seeking – instead of conceiving of other possibilities, i.e., that he can leave without the officer's permission.

Scholarship on moral development in adolescence also explains why a juvenile would be more inclined than an adult to acquiesce to a police officer's demands. Adolescence is marked by "conventional morality" – "conforming to and upholding the rules and expectations and conventions of society or authority just because they are society's rules, expectations, or conventions." Lawrence Kohlberg, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES 172-73 (1984). Most people who reach the "postconventional level of morality" – where they grapple with the moral principles underlying these rules before deciding to accept them as their own values – only do so in their twenties. *Id.* at 172-73. The conformity characteristic of adolescence means that teenagers in general are more compliant when confronted by authority figures. Thus, juveniles in Michael's situation are more likely to comply with the officer's demands that he tell a specific story. Adolescence is a time when the gradual transition to becoming a self-governing, autonomous individual begins. KIDS ARE DIFFERENT at 16. But adolescents remain emotionally dependent on other people, specifically their parents and peers, throughout this development process; they are thus less capable of independent, self-directed action than adults who have achieved a greater sense of identity and autonomy.

They are vulnerable to influences from both peers and parents. *Id.* at 16-17.[11]

Finally, new research into the structure and function of the teenage brain also suggests that immature brain development among adolescents may disadvantage them in the interrogation room setting. This research, made possible by new technologies such as magnetic resonance imaging (MRI) that allow scientists to study images of the brain, suggest that the teenage brain does not fully develop until the early 20's. Most importantly, the research suggests that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which govern decision-making, judgment, and impulse control. As this area of the brain develops, young adults become more reflective and deliberate decision makers, the very skills which they would need in confronting and dealing with sophisticated police interrogators. *See* David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14.1 STAN. L. & POL'Y REV. 13, 15 (2003) (citing NAT'L RES. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 16 (Joan McCord *et al.* eds., 2001)); Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 417, 421-23 (2000)); National Institute of Mental Health, *Teenage Brain: A Work in Progress* (NIH Publication No. 01-4929, January 2001) (available at http://www.nimh.nih.gov/publicat/teenbrain.pdf). *See also In re Stanford*, 537 U.S. 968, __, 123 S.Ct. 472, 474 (2002) (Stevens, J., dissenting) (noting that "[n]euroscientific evidence of the last

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[11] *See also* Laurence Steinberg *et al.*, *The Vicissitudes of Autonomy in Early Adolescence*, 57 CHILD DEVELOPMENT 841, 848 (1986); Steinberg & Schwartz, *Developmental Psychology* at 23 (noting that adolescence is a period of "tremendous malleability" and "tremendous plasticity in response to features of the environment.")

few years has revealed that adolescent brains are not fully developed" and "use of magnetic resonance imaging – MRI scans – have provided valuable data that serve to make the case even stronger that adolescents are more vulnerable, more impulsive, and less self-disciplined than adults") (internal quotations omitted) (citations omitted). Although this research is in its infancy, early work does suggest a link between age and decision making, such that a reasonable seventeen-year-old would be less able than a reasonable adult to withstand the pressures of the interrogation setting.[12]

This psychological and neurological research must inform this Court's examination of the specific circumstances of Michael's interrogation. Michael was taken to the police station by his parents after they were contacted by the police. Michael's parents never questioned whether they could decline the detective's request that they bring Michael to the station. The detective denied Michael's and his parents' requests (in Michael's presence) to accompany Michael into the interview room. Michael's parents did not challenge the authority of the police officer to exclude them from the interrogation and instead submitted to the detective's authority. Michael's beliefs about his situation were reasonably shaped by his parents' own submission to police authority. The circumstances surrounding Michael's interrogation, when viewed in the context of the developmental deficits of youth, had a major impact on Michael's reasonable belief that he could not make an autonomous choice, refuse to be interrogated and leave the police station.

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[12] Another study of the teenage brain suggests that until the frontal lobes mature, teenagers may be less able to process emotions that adults. A.A. Baird, S.A. Gruber et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. AMER. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 195, 195-99 (1999).

III. FEDERAL, STATE AND LOCAL LAWS ALREADY REQUIRE POLICE TO DETERMINE AN INDIVIDUAL'S AGE AND TAKE SPECIFIC ACTIONS UPON LEARNING THAT THE INDIVIDUAL IS UNDER 18; REQUIRING POLICE OFFICERS TO STEP INTO THE SHOES OF A REASONABLE JUVENILE TO ASSESS WHETHER A YOUTH IS IN CUSTODY PLACES NO ADDITIONAL BURDEN ON LAW ENFORCEMENT

Petitioner urges this Court to renounce the reasonable juvenile test for determining custody, arguing, *inter alia*, that the test places an additional burden on law enforcement. This argument is without merit. As described *infra*, pursuant to federal and state laws, and local ordinances, law enforcement officials must routinely determine the age of a suspect and/or a person they are taking into custody and then take certain actions upon learning that the person in question is a minor. Since this determination is already a routine part of law enforcement activities, no additional burden is created by affirming the Ninth Circuit's proper application of the reasonable juvenile test.

Thus, for example, jurisdictions that receive federal monies pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974 (codified as amended at 42 U.S.C. § 5601 *et seq.*)[13] must ensure that law enforcement officers comply with certain requirements with respect to minors in custody.

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[13] The U.S. Department of Justice reported that in 2001, 48 states, the District of Columbia, and certain territories were either completely or substantially in compliance with this requirement and, thus, were eligible for JJDPA funding in fiscal 2003. *See* Office of Juvenile Justice and Delinquency Prevention, *2001 Compliance Monitoring Summary: Summary of State Compliance with the Juvenile Justice and Delinquency Prevention Act of 1974* (Washington, D.C., December 8, 2003).

Specifically, federal regulations mandate that officers can only keep juveniles in an adult jail or lockup – while maintaining sight and sound separation from adult offenders – for up to six hours from the time they are taken into custody. 28 C.F.R. § 31.303(e) (2) and (3). To comply with this federal mandate, law enforcement officials must routinely determine whether an individual is a minor upon taking that individual into custody. Currently, 48 states, the District of Columbia and certain territories are implementing this mandate. *See n. 12 supra.*

Police officers must make the same initial determination of an individual's "youth status" in those states that require them to promptly notify a minor's parent/ guardian or legal custodian as to the minor's location upon taking the minor into custody.[14]

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[14] *See, e.g.*, DEL. CODE ANN. tit. 10 § 1004 (officer taking child into custody shall immediately notify); FLA. STAT. ANN. § 985.207(2) (person taking child into custody shall attempt to notify); HAW. REV. STAT. § 571-31 (when juvenile taken into custody, officers must immediately notify); 705 ILL. COMP. STAT. 405/5-405 (when minor arrested, law enforcement "shall immediately make a reasonable attempt" to notify); ME. REV. STAT. ANN. tit. 15 § 3203-A(2) (police officers shall notify "without unnecessary delay" when minor is arrested); MISS. CODE ANN. § 43-21-303(3) (immediately release or continue reasonable efforts to notify); MONT. CODE ANN. § 41-5-331 (when youth taken into custody for questioning, must be immediately notified); N.Y. CRIM. PROC. LAW § 140.20 (officers shall immediately notify when juvenile arrested); N.Y. FAM. CT. LAW § 305.2(3) (same); S.C. CODE § 20-7-7205 (officer taking child into custody shall notify as soon as possible); S.D. CODIFIED LAWS § 26-7A-15 (officer taking child into custody "shall immediately, without unnecessary delay in keeping with the circumstances" notify); TENN. CODE ANN. § 37-1-115 (person taking child into custody shall within a reasonable time either notify or release the child to his parent/guardian or legal custodian); TEX. FAM. CODE ANN. § 52.02 (person taking child into custody shall "promptly" notify); UTAH CODE ANN. § 78-3A-113 (officer taking minor into custody, shall notify "without unnecessary delay"); W.VA. CODE § 49-5-8 (officers must immediately notify when juvenile taken into custody); WIS. STAT. § 938.19(2) (person taking juvenile into custody shall "immediately attempt to notify" and continue to attempt to notify by the most practicable means until either parent/guardian or legal custodian

Similarly, a number of states require law enforcement officials to take certain steps before interrogating a minor. Specifically, these states mandate that a juvenile's parent/guardian, legal custodian or attorney be present during questioning, or at the very least that the minor be given the opportunity to consult with a parent/guardian or attorney before waiving his rights.[15]

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contacted or juvenile brought to intake worker; when latter, intake worker shall continue attempts until successful notification); WYO. STAT. ANN. § 14-6-206 (any person taking a child into custody shall notify "as soon as possible"). *See also* 18 U.S.C. § 5033 (federal requirement that law enforcement officers who take juvenile into custody immediately notify juvenile's parents, guardian or custodian and "immediately advise such juvenile of his legal rights, in language comprehensive to juvenile").

[15] *See, e.g.*, COLO. REV. STAT. § 19-2-511 (statements by a juvenile resulting from custodial interrogation are inadmissible unless parent/guardian or legal or physical custodian was present at the interrogation and both were advised of the juvenile's rights and both waived the rights in writing; if parent/guardian or custodian not present, statements may be admissible if attorney present); 705 ILL. COMP. STAT. 405/5-170 (minor under 13 must be represented by counsel during entire custodial interrogation); IND. CODE § 31-32-5-1 (rights guaranteed to child can be waived by (1) counsel for child if child knowingly and voluntarily joins the waiver; (2) child's parent/guardian or custodian if that person knowingly and voluntarily waives, has no adverse interest, meaningful consultation has occurred between that person and child, and child knowingly and voluntarily joins in waiver; or (3) emancipated child); IOWA CODE § 232.11 (child less than 16 years of age cannot waive right to be represented by counsel in custodial interrogation the written consent of the child's parent, guardian or custodian; waiver by child 16 years of age and older is only valid if good faith effort made to notify parent/guardian or custodian of child's location, alleged act, and right to visit and confer with child); *In the Matter of B.M.B.*, 955 P.2d 1302, 1312-1313 (Kansas 1998) (juvenile under 14 must be given opportunity to consult with parent/guardian or attorney before waiving rights to an attorney and against self-incrimination; both parent/guardian and juvenile shall be advised of these rights); *Commonwealth v. A Juvenile*, 449 N.E.2d 654, 657 (Mass. 1983) (holding that waiver of Miranda rights by juvenile under 14 is not effective without showing that parent or interest adult was present.

understood the warnings, and had opportunity to explain rights to juvenile; for youth 14 and over, for waiver to be valid without consultation, "the circumstances should demonstrate a high degree of intelligence, experience, knowledge or sophistication on the part of the juvenile"); ME. REV. STAT. ANN. tit. 15 § 3203-A(2-A) (when juvenile is arrested, officer may not question juvenile until either: legal custodian is present during questioning; legal custodian gives consent for questioning in his/her absence; or after reasonable effort, officer cannot contact custodian and officer seeks to question juvenile about continuing or imminent criminal activity); MISS. CODE ANN. § 43-21-303(3) (person taking child into custody shall make continuing reasonable efforts to notify and invite them to be present during questioning), *see also M.A.C. v. Harrison County Family Court*, 566 So.2d 472, 475 (Miss. 1990) (holding that parent has statutory right to be present during interrogation of child); MONT. CODE ANN. § 41-5-331 (youth under 16 years of age may waive rights if youth and youth's parents agree to waiver, or, if youth and parents do not agree, youth made waiver with advice of counsel); *In the Interest of J.F.*, 668 A.2d 426, 430 (N.J. 1995) (holding that police may interrogate a juvenile without a parent/guardian present "only if juvenile has withheld their names and addresses, a good faith effort to locate them is unsuccessful, or they simply refuse to attend the interrogation"); N.Y. FAM. CT. LAW § 305.2(7) (minor under 16 who is in custody for alleged delinquency offense shall not be questioned unless minor and parent or other person legally responsible for minor are advised of minor's rights); N.C. GEN. STAT. § 7B-2101 (when juvenile is under 14, no in-custody statement shall be admitted into evidence unless made in presence of juvenile's parent/guardian or custodian, or juvenile's attorney; if attorney is not present, parent may not waive any rights on behalf of juvenile); OKLA. STAT. tit. 10, § 7303-3.1 (no information gained by a custodial interrogation of a child under sixteen years of age is admissible unless the interrogation is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the child and, if no attorney is present, only after both child and adult have been fully advised of the rights of the child); TEX. FAM. CODE ANN. § 51.09 (child can only waive rights if waiver made in writing by attorney and child); *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982) (before juvenile can waive rights, he must be given opportunity to consult with an adult (i.e. parent, legal guardian or attorney) who is completely disassociated from the prosecution and is informed of the juvenile's rights); W.VA. CODE § 49-5-2(k)(1) (statements made by juvenile 14 or 15 years of age while in custody are not admissible unless made in the presence of the juvenile's counsel, or in the presence of

In addition to the requirements set forth in these state and federal laws, the leading police interrogation manual, Fred E. Inbau, John E. Reid *et al.*, CRIMINAL INTERROGATION AND CONFESSIONS (4th ed. 2001) [hereinafter Inbau, Reid], also specifically instructs police on how to deal with youthful suspects and their parents. For example, Inbau, Reid teaches that some states have parental presence requirements, and advises officers specifically on how to deal with "over-protective parents." *Id.* at 300-01. The manual also teaches officers to marginalize parents by advising officers to tell parents to refrain from talking, and to proceed with the interrogation as if the parents were not there. *Id.* at 300-301. Finally, Inbau, Reid counsels law enforcement to use specific psychological "themes" with youthful offenders, such as placing blame for the suspect's actions on their family (if the parent is not present), their neighborhood, or peers, and suggesting that the youth should "embark upon restraint and corrective action before serious consequences develop." *Id.* at 298-300. These recommended specialized tactics for interrogating youthful suspects suggest not only that law enforcement must ascertain the age of the person they are questioning, but that they actually take advantage of the suspect's youth during questioning.

Outside of the station, police officers must routinely inquire whether an individual on the street is a minor in those jurisdictions with juvenile curfews. In the 1990s, "legislatures enacted more than one thousand new juvenile curfew laws and governments revived existing curfew laws that had long been dormant." Deidre E. Norton, *Why Criminalize Children? Looking Beyond the Express Policies Driving Juvenile Curfew Legislation*, 4 N.Y.U. J. LEGIS. & PUB. POL'Y 175, 175 (2000-

and with the consent of the juvenile's parent or custodian after the parent/custodian has been fully advised of juvenile's rights; statements made by youth under age 14 are not admissible unless made in the presence of youth's counsel).

2001) (citation omitted). According to a 1995 study of the seventy-seven most populous cities in the United States, 77% of them impose juvenile curfews. Norton at 177 (citing William Ruefle & Kenneth Mike Reynolds, *Curfews and Delinquency in Major American Cities*, 41 CRIME & DELINQ. 347, 353 (1995)). And since 1995, at least nine more of the most populous cities have enacted curfews, bringing the percentage up to 88%. Norton at 177 & n. 10 (citing Ruefle & Reynolds at 353). *See also* U.S. Conference of Mayors, *A Status Report on Youth Curfews in America's Cities: A 347-City Survey* 1 (1997) (www.usmayors.org/uscm/news/publications/curfew.htm) (stating that 70% of the 272 cities surveyed had youth curfews in 1995) [hereinafter Mayors' Conference]. The rationales behind passing youth curfews include reducing delinquent and criminal behavior as well as victimization of youth, and for the daytime curfews, increasing school attendance through enforcement of the jurisdiction's truancy laws. Mayors' Conference at 2-6.[16]

These curfews set specific times of day – both at night and during the day – when minors are not allowed to be on the streets alone. Consequently, police officers on patrol must regularly ascertain whether individuals they encounter on the street during curfew hours are minors. And if police do identify a minor on the street after curfew, officers must then take specific actions that would be inapplicable to an adult, i.e., likely

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[16] In upholding the constitutionality of juvenile curfews, courts have again relied on this Court's findings that minors' "immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely," *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993) (quoting *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990)), and that juveniles lack the fundamental right in free movement. *Hutchins v. District of Columbia*, 188 F.3d 531, 538-39 (D.C. Cir. 1999) (en banc) (citing, *inter alia*, *Vernonia*, 515 U.S. at 654 and *Schall*, 467 U.S. at 265) and *Schleifer v. City of Charlottesville*, 159 F.3d 843, 847 (4th Cir. 1998) (citing, *inter alia*, *Vernonia*, 515 U.S. at 654).

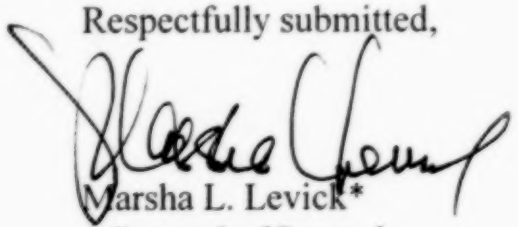
issue some type of citation, and either take the minor home, back to school, or to the police station if they cannot locate a responsible adult. *See, e.g., Hutchins v. District of Columbia*, 188 F.3d 531, 534-35 (D.C. Cir. 1999) (en banc) (describing curfew law and procedures in Washington, D.C.); *Schleifer v. City of Charlottesville*, 159 F.3d 843, 856-58 (4th Cir. 1998) (same for Charlottesville, Virginia); *Qutb v. Strauss*, 11 F.3d 488, 496- 499 (5th Cir. 1993) (same for Dallas, Texas).

Given the myriad of federal, state and local laws, as well as police training literature, that already require or encourage police to determine the age of individuals they come into contact with, it can hardly be deemed an additional burden for law enforcement to ascertain a person's age when interviewing or interrogating them. This argument is especially specious with regard to minors interrogated at police stations, where law enforcement is under *federal mandate* to know whether the individual is a juvenile.

CONCLUSION

For the foregoing reasons, *Amici Curiae* Juvenile Law Center *et al.*, respectfully request that the judgment of the U.S. Court of Appeals for the Ninth Circuit be affirmed.

Respectfully submitted,



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APPENDIX A

IDENTITY OF *AMICI CURIAE*

Organizations

Juvenile Law Center (JLC) is one of the oldest legal service firms for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies – for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. We believe the juvenile justice and child welfare systems should be used only when necessary, and work to ensure that the children and families served by those systems receive adequate education, and physical and mental health care. JLC is a non-profit public interest firm. Legal services are provided at no cost to our clients.

The **Northwestern University School of Law's Bluhm Legal Clinic** has represented poor children in juvenile and criminal proceedings since the Clinic's founding in 1969. The **Children and Family Justice Center** (CFJC) was established in 1992 at the Clinic as a legal service provider for children, youth and families and a research and policy center. Six clinical staff attorneys currently work at the CFJC, providing legal representation and advocacy for children in a wide variety of matters, including in the areas of juvenile delinquency, criminal justice, special education, school suspension and expulsion, immigration and political asylum, and appeals. CFJC staff attorneys are also law school faculty members who supervise

second- and third-year law students in the legal and advocacy work; they are assisted in this work by the CFJC's social worker and social work students.

Founded in 1997, the **Juvenile Justice Project of Louisiana** (JJPL) has established itself as a partner in efforts to reform Louisiana's juvenile justice system. We have dedicated ourselves to advocating not only for more effective, less expensive alternatives to incarceration, but also for the zealous and effective representation of children in the juvenile and criminal justice systems. JJPL was founded on the recognition that children and adolescents are fundamentally different from adults and, as such, require developmentally appropriate interventions and advocacy. The manner in which the judicial system responds to young people in crisis has been a central focus of JJPL. We believe that children must be afforded essential due process protections and that such protections necessarily include a consideration of their developmental capacities and limitations. This is particularly the case where a child is likely to feel intimidated by authority figures. Given the ways in which young people are especially susceptible to police questioning and interrogations, a juvenile must have meaningful access to counsel to ensure his rights are protected. JJPL is committed to ensuring that children and youth accused of wrongdoing receive the appropriate protections of the law.

Legal Services for Children (LSC) was founded in 1975 as the first non-profit law firm established to provide free direct legal and social services to children and youth. LSC represents youth in dependency, guardianship, school expulsion, immigration and other cases. LSC uses attorney-social worker teams to assist at-risk youth in the Bay Area who need to access the legal system to stabilize or improve their lives. LSC's mission is to empower youth by increasing their active participation in making decisions about their own lives. LSC works directly with youth involved in, or at risk of involvement

in the juvenile justice system. LSC is also the host organization for the Pacific Juvenile Defender Center. The Defender Center provides support, training and technical assistance for juvenile defenders throughout California and Hawaii. It is the mission of the Defender Center to improve the quality of juvenile defense in our region and ensure that juveniles are provided with holistic representation that meets their needs.

The **Mexican American Legal Defense and Educational Fund** (MALDEF) is a national civil rights organization established in 1968. Its principal objective is to secure, through litigation, advocacy, and education, the civil rights of Latinos and Latinas living in the United States. During the last several years, MALDEF's work in the area of criminal justice has been expanding. Within our criminal justice work, a goal of our organization is to protect the constitutional rights of Latino and Latina youth who come into contact with the criminal and juvenile justice systems.

The **National Council of La Raza** (NCLR) is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR works toward this goal through two primary, complementary approaches: capacity-building assistance to support and strengthen Hispanic community-based organizations and applied research, policy analysis, and advocacy. Over the past four years, NCLR has focused its civil rights policy portfolio to include juvenile and criminal justice issues affecting the Latino community. NCLR joins this brief to support the Constitutional rights of Latino youth who come into contact with the criminal and juvenile justice systems, as well as with state and federal law enforcement officials.

The **Public Defender Service for the District of Columbia** (PDS) represents numerous juvenile clients in the District of Columbia who will be affected by this case. In our experience, child clients are much more likely than adults to view themselves in custody and to give false confessions in order to please or influence adult authority figures. We have observed that, because our juvenile clients are continuously "in the custody" of an adult authority, be it a parent, guardian, or other legal custodian, they lack the freedom and autonomy of most adults and tend to assume that they "must" speak in situations where a reasonable adult client would not. In fact, in many situations in which the "reasonable" adult is free to walk away, it would be "unreasonable" for children to have the same expectation and sense of freedom. We believe it is important for the Court to have the benefit of our real world observations as it considers the important issues presented by this case, especially because we believe that the unique circumstances of the custodial interrogation of children result in wrongful convictions of juvenile clients.

The **San Francisco Public Defender's Office** provides legal representation per year to approximately 1,400 juveniles, aged 10 -18 who are arrested and charged with delinquent offenses. The majority of the juvenile clients represented by the office come from difficult family circumstances and live in dangerous and poverty stricken neighborhoods and are in need of legal and social services. Our juvenile clients are a very vulnerable population with needs that are substantial and involve multi-systems collaborations such as with special education, mental health, dependency and immigration. The goal of the juvenile justice system is very different from the adult system. We recognize the need to treat children going through adolescence very differently than adults. We, therefore, support the *amicus* brief on behalf of the respondent in this case.

The **Southern Center for Human Rights** is a non-profit, public interest legal program governed by a Board of Directors. Among its missions are protection of the constitutional rights of children and adults accused of crimes, achieving equal justice, and ensuring that the criminal justice system operates consistently with the requirements of the Bill of Rights. The Center is particularly interested in law enforcement practices as they relate to children and others who may not have the same maturity and judgment as others in dealing with law enforcement officers.

The **Youth Law Center** (YLC) is a national public interest law firm with offices in San Francisco and Washington, D.C., that has worked since 1978 on behalf of children in juvenile justice and child welfare systems. YLC has worked with judges, prosecutors, defense counsel, probation departments, corrections officials, sheriffs, police, legislators, community groups, parents, attorneys, and other child advocates in California and throughout the country, providing public education, training, technical assistance, legislative and administrative advocacy, and litigation to protect children from violation of their civil and constitutional rights. YLC has worked for more than two decades to promote individualized treatment and rehabilitative goals in the juvenile justice system, protection of due process rights of youth at risk, effective programs and services for youth at risk and in trouble, consideration of the developmental differences between children and adults, and racial fairness in the justice system. YLC is particularly interested in adolescent development issues, having worked on such issues for 25 years, including helping to develop a comprehensive training curriculum on adolescent development for juvenile court personnel with the support of the John D. and Catherine T. MacArthur Foundation.

Individuals

Professor Marie Banich received her Ph.D. from the University of Chicago in 1985. She is a professor in the Department of Psychology at the University of Colorado at Boulder and in the Department of Psychiatry, at the University of Colorado Health Sciences Center, in Denver. Her fields of professional interest are cognitive neuroscience and human neuropsychology. She is currently examining decision-making processes of adolescents and adults.

Professor Jeffrey Fagan is a Professor of Law and Public Health at Columbia University. He is also a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Professor Fagan is currently conducting research on several dimensions of juvenile law and juvenile justice, including the competence and culpability of adolescents facing transfer to the criminal court. He is also conducting research on the death penalty for persons who commit capital offenses before their 18th birthday; this research suggests that the developmental limitations of adolescents may compromise their capacity for full participation in legal proceedings when punishment is at stake, whether in criminal or juvenile court. Professor Fagan has conducted research on capital punishment, and his research has shown that false confessions are often a cause of wrongful conviction and reversible error. Accordingly, he agrees to sign this *amicus* brief to assist in defining standards and procedures for assessing the competence of adolescents facing legal proceedings and the possibility of punishment.

Professor Barry Feld is a Centennial Professor of Law at the University of Minnesota Law School. He has done extensive research on many aspects of juvenile justice and has taught about the field for three decades. His publications have included eight books and more than 60 articles on juvenile

justice procedure and administration. Professor Feld has written extensively about adolescent development and juveniles' competence and capacity to waive their legal rights, both to waive their Miranda rights and their right to counsel.

Professor Martin Guggenheim of the New York University School of Law (NYU) is among the nation's pre-eminent scholars, teachers and practitioners in the area of children's law. At NYU, he is Executive Director of Washington Square Legal Services (NYU's free legal services program), and Supervising Attorney of NYU's Family Defense Clinic, which seeks to protect vulnerable families from unwarranted governmental intrusion. He directed NYU's Juvenile Rights Clinic for fifteen years, and currently teaches a seminar entitled Child, Parent & State that explores such issues as the rights of young people and the bases for according young people rights that adults have under the Constitution. As a *pro bono* advocate for children, Professor Guggenheim has litigated innumerable cases in the state and federal courts, and served as chief counsel for the following three cases in the United States Supreme Court: *Schall v. Martin*, 467 U.S. 253 (1984), *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502 (1982), and *Santosky v. Kramer*, 455 U.S. 745 (1982). Professor Guggenheim serves on numerous national and regional boards of directors and advisors for organizations and projects involving children.

Professor Randy Hertz of the New York University School of Law (NYU) is also among the country's leading scholars and teachers in the area of children and the law. He is the Director of Clinical Programs at NYU, as well as Supervising Attorney of NYU's Juvenile Rights Clinic, and the Editor-In-Chief of the Clinical Law Review, a national, peer-reviewed scholarly journal. Professor Hertz is a current or former member of numerous professional organizations

aimed at improving the administration of justice for children. He has published many books and articles on subjects including the legal needs of young people. He is the 2000 recipient of the American Bar Association's Livingston Hall Award for Juvenile Justice Advocacy.

Professor Paul Holland, a clinical assistant Professor of Law at the University of Michigan Law School, has represented youth charged with crimes for over ten years, in Washington, D.C., Illinois, and Michigan. He served as Deputy Director of the Juvenile Justice Clinic at Georgetown University Law Center for five years. He also served as a member of the Illinois Sub-Cabinet for Children and Families. He is presently the Michigan representative to the Board of the Midwest Region Juvenile Defender Center.

The Honorable David B. Mitchell is retired from the Circuit Court for Baltimore City, having served 18 years as a judge of this court of general jurisdiction. His duties, in addition to those generally associated with a judge at that level of court, included being the presiding and administrative judge of the juvenile and later the criminal divisions of that court. He also was chairman for many years of the Juvenile and Family Law Committee of the Maryland Judicial Conference. He adheres to the *amicus* brief in his individual capacity as a retired judge.

Professor Wallace Mlyniec is the Associate Dean of Clinical Education and Public Service Programs, Lupo-Ricci Professor of Clinical Legal Studies, and Director of the Juvenile Justice Clinic at Georgetown University Law Center. He teaches courses in family law and children's rights and assists with the training of criminal defense and juvenile defense fellows in the Prettyman Legal Internship Program. He is the author of numerous books and articles concerning criminal law and the law relating to children and families.

Wallace Mlyniec received a Bicentennial Fellowship from the Swedish government of study their child welfare system, the Stuart Stiller Award for public service, and the William Pincus award for contributions to clinical education. He holds his B.S. from Northwestern University and his J.D. from Georgetown University.

Professor Edward P. Mulvey is a Professor of Psychiatry and Director of the Law and Psychiatry Program at Western Psychiatric Institute and Clinic at the University of Pittsburgh School of Medicine. He received his B.A. in psychology from Yale University in 1973, and his Ph.D. in Community/Clinical Psychology from the University of Virginia in 1982. Dr. Mulvey is a Fellow of both the American Psychological Association and the American Psychological Society, a recipient of a Faculty Scholar's Award from the William T. Grant Foundation, a member of two MacArthur Foundation Research Networks (one on Mental Health and the Law and another on Adolescent Development and Juvenile Justice), and a member of the steering committee for the National Science Foundation-funded National Consortium on Violence Research.

Professor Catherine J. Ross, Ph.D., J. D., George Washington University Law School, specializes in legal issues concerning children and families and the relationships between children, their parents and the state. She has written and lectured extensively on topics including children's need for parental advice in the juvenile justice system in order to realize meaningful rights under the Fifth and Sixth Amendments.

Professor Elizabeth Scott, currently a visiting Professor of Law at Columbia Law School, is class of 1962 Professor of Law at the University of Virginia School of Law. Her research and scholarship is in the area of juvenile justice

and delinquency. In addition to the articles cited in this brief, recent articles include *Less Guilty by Reason of Adolescence* in the December 2003 AMERICAN PSYCHOLOGIST with Laurence Steinberg.

Annie Steinberg, M.D., Associate Professor of Pediatrics and Child Psychiatry at the University of Pennsylvania Medical School and The Children's Hospital of Philadelphia, and **Alan M. Lerner**, Esquire, Practice Professor of Law, University of Pennsylvania Law School, are two of the five co-directors of the Field Center for Children's Policy, Practice, and Research, an interdisciplinary center of the University of Pennsylvania Schools of Law, Medicine, and Social Work, and The Children's Hospital of Philadelphia. The Field Center is a child-centered, interdisciplinary, vertical, team-based center whose mission is the pursuit of innovative solutions to the crisis facing America's children. Dr. Steinberg's practice, both within and without the Field Center, focuses on children, many of whom come into contact with the juvenile court system. Professor Lerner directs the Law School's Child Advocacy Clinic, which acts as child advocates and guardian ad litems for children in the child welfare system in Philadelphia.

Professor Laurence Steinberg, Distinguished Professor of Psychology at Temple University, directs the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Professor Steinberg is a developmental psychologist specializing in adolescence. His current research examines adolescents' competence to stand trial, the predictors and correlates of serious juvenile offending, and the development of psychological capacities likely to influence criminal responsibility. He is a former President of the Society for Research on Adolescence.

APPENDIX B

State Age Requirements for Various Activities
Reproduced from the Juvenile Law Center website
www.jlc.org/agerequirements

Marriage

Unless minors meet certain statutorily-created exceptions, the majority of states require both parties to a marriage to be eighteen years of age or older. These are Alaska, ALASKA STAT. § 25.05.171; Arizona, ARIZ. REV. STAT. § 25-102; Arkansas, ARK. CODE ANN. § 9-11-102; California, CAL. FAM. CODE § 301; Colorado, COLO. REV. STAT. § 14-2-106; Connecticut, CONN. GEN. STAT. § 46b-30; Florida, FLA. STAT. ANN. § 741.0405; Hawaii, HAW. REV. STAT. § 572-2; Idaho, IDAHO CODE § 32-202; Illinois, 750 ILL. COMP. STAT. 5/203; Indiana, IND. CODE § 31-11-1-4; Iowa, IOWA CODE § 595.2; Kansas, KAN. STAT. ANN. § 23-106; Kentucky, KY. REV. STAT. ANN. § 402.020; Louisiana, LA. CHILDREN'S CODE ANN. art. 1545; Maine, ME. REV. STAT. ANN. tit. 19-A, § 652; Maryland, MD. CODE. ANN., FAM. LAW § 2-301; Massachusetts, MASS. GEN. LAWS ch. 207, § 7; Minnesota, MINN. STAT. § 517.02; Missouri, MO. REV. STAT. § 451.090; Montana, MONT. CODE ANN. § 40-1-213; Nebraska, NEB. REV. STAT. § 42-105; Nevada, NEV. REV. STAT. 122.020; New Hampshire, N.H. REV. STAT. ANN. § 457:5; New Jersey, N.J. STAT. ANN. § 37:1-6; New Mexico, N.M. STAT. ANN. § 40-1-5; New York, N.Y. DOM. REL. LAW § 7; North Carolina, N.C. GEN. STAT. § 51-2; North Dakota, N.D. CENT. CODE 14-03-02; Ohio, OHIO REV. CODE ANN. § 3101.01; Oklahoma, OKLA. STAT. tit. 43, § 3; Pennsylvania, 23 PA. CONS. STAT. § 1304; Rhode Island, R.I. GEN. LAWS § 15-2-11; South Dakota, S.D. CODIFIED LAWS § 25-1-9; Tennessee, TENN. CODE ANN. § 36-3-106; Texas, TEX. FAM. CODE ANN. § 2.003; Utah, UTAH CODE ANN. § 30-1-9;

Vermont, VT. STAT. ANN. tit. 18, § 5142; Virginia, VA. CODE ANN. § 20-49; Washington, WASH. REV. CODE § 26.04.010; West Virginia, W. VA. CODE § 48-2-301; Wisconsin, WIS. STAT. § 765.02; Wyoming, WYO. STAT. ANN. § 20-1-102; and the District of Columbia, D.C. CODE ANN. § 46-411.

Oregon sets the age at 17 years or older, *see* OR. REV. STAT. § 106.010. Three states (Georgia, Michigan, and South Carolina) set the age at 16, *see* GA. CODE ANN. § 19-3-2; MICH. COMP. LAWS 551.51; S.C. CODE ANN. § 20-1-100, and Alabama sets the age at 14. ALA. CODE § 30-1-4. Finally, two states set different age requirements for males and females – Delaware (18 years for males, 16 years for females), DEL. CODE ANN. tit. 13, § 123, and Mississippi (17 years for males, 15 years for females), MISS. CODE. ANN. § 93-1-5.

Purchase of Alcohol

All 50 states and the District of Columbia set 21 as the legal age for purchasing alcohol. *See*, Alabama, ALA. CODE § 28-1-5; Alaska, ALASKA STAT. § 04.16.050; Arizona, ARIZ. REV. STAT. § 4-101; Arkansas, ARK. CODE ANN. § 3-3-203; California, CAL. HEALTH & SAFETY CODE § 11999; Colorado, COLO. REV. STAT. § 12-47-901; Connecticut, CONN. GEN. STAT. § 30-86; Delaware, DEL. CODE ANN. tit. 4, § 708; Florida, FLA. STAT. ANN. § 562.111; Georgia, GA. CODE ANN. § 3-3-23; Hawaii, HAW. REV. STAT. ANN. § 712-1250.5; Idaho, IDAHO CODE § 23-604; Illinois, 235 ILL. COMP. STAT. 5/6-16; Indiana, IND. CODE § 7.1-5-7-1; Iowa, IOWA CODE § 123.3; Kansas, KAN. STAT. ANN. § 41-727; Kentucky, KY. REV. STAT. ANN. § 244.085; Louisiana, LA. REV. STAT. ANN. § 93.12; Maine, ME. REV. STAT. ANN. tit. 19A, § 652; Maryland, MD. ANN. CODE art. 2B, § 1-201; Massachusetts, MASS. GEN. LAWS ch. 138, § 34C; Michigan, MICH. COMP. LAWS § 436.1703; Minnesota, MINN. STAT. § 340A.503; Mississippi, MISS. CODE ANN. § 67-3-70; Missouri, MO. REV. STAT. § 311.325; Montana, MONT. CODE ANN. § 16-3-301;

Nebraska, NEB. REV. STAT. § 53-103, 53-180; Nevada, NEV. REV. STAT. 202.020; New Hampshire, N.H. REV. STAT. ANN. § 179.10; New Jersey, N.J. STAT. ANN. § 9:17B-1; New Mexico, N.M. STAT. ANN. § 60-3A; New York, N.Y. ALCO. BEV. CONT. § 65C; North Carolina, N.C. GEN. STAT. § 18B-302; North Dakota, N.D. CENT. CODE 5-01-08; Oklahoma, OKLA. STAT. tit. 37, § 604; Ohio, OHIO REV. CODE ANN. § 43-01-22; Oregon, OR. REV. STAT. § 471.105; Pennsylvania, 18 PA. CONS. STAT. ANN. § 6308; Rhode Island, R.I. GEN. LAWS § 3-8-6; South Carolina, S.C. CODE ANN. § 61-4-50; South Dakota, S.D. CODIFIED LAWS § 35-4-78; Tennessee, TENN. CODE ANN. § 57-4-20; Texas, TEX. ALCO. BEV. CODE ANN. § 106.01; Utah, UTAH CODE ANN. § 32A-1-105; Vermont, VT. STAT. ANN. tit. 7, § 2; Virginia, VA. CODE ANN. § 4.1-304; Washington, WASH. REV. CODE § 66.44.290; West Virginia, W. VA. CODE § 60-3-22; WIS. STAT. § 125.02; Wyoming, WYO. STAT. ANN. § 12-6-101; and the District of Columbia, D.C. CODE. ANN. § 25-1002.

Compulsory Education

All 50 states and the District of Colombia make school attendance compulsory for minors within statutorily-set age ranges. *See*, Alabama, ALA. CODE § 16-28-3 (ages 7-16); Alaska, ALASKA STAT. § 14.30.010 (ages 7-17); Arizona, ALASKA STAT. § 14.30.010 (ages 6-16); Arkansas, ARK. CODE ANN. § 6-18-201 (ages 5-17); California, CAL. EDUC. CODE § 48200 (ages 7-17); Colorado, COLO. REV. STAT. § 22-33-104 (ages 7-15); Connecticut, CONN. GEN. ST. § 10-184 (ages 5-17); Delaware, DEL. CODE ANN. tit. 14 § 2702 (ages 5-16); Florida, FLA. STAT. ANN. § 1003.21 (ages 6-16); Georgia, GA. CODE ANN. § 20-2-690.1 (ages 6-15); Hawaii, HAW. REV. STAT. § 302A-1132 (ages 6-17); Idaho, IDAHO CODE § 33-202 (ages 7-16); Illinois, 105 ILL. COMP. STAT. 5/26-1 (ages 6-17); Indiana, IND. CODE § 20-8.1.-3-17 (ages 6-17); Iowa, IOWA CODE § 299.1A (ages 6-15); Kansas, KAN. STAT. ANN. § 72-

1111 (ages 7-17); Kentucky, KY. REV. STAT. ANN. § 159.010 (ages 6-15); Louisiana, LA. REV. STAT. § 17:222 (ages 7-17); Maine, ME. REV. STAT. ANN. tit. 20-A § 3271 (ages 7-16); Maryland, MD. CODE ANN., EDUC. § 7-301 (ages 5-16); Massachusetts, MASS. GEN. LAWS ch. 76 § 1 (authorizes school districts to set ages); Michigan, MICH. COMP. LAWS 380.1561 (ages 6-16); Minnesota, MINN. STAT. § 120A.22 (ages 5-16); Mississippi, MISS. CODE ANN. § 37-13-91 (ages 6-16); Missouri, MO. REV. STAT. § 167.031 (ages 5-17); Montana, MONT. CODE ANN. § 20-5-102 (ages 7-15); Nebraska, NEB. REV. STAT. § 79-201 (ages 7-16); Nevada, NEV. REV. STAT. 392.040 (ages 7-16); New Hampshire, N.H. REV. STAT. ANN. § 193:1 (ages 6-15); New Jersey, N.J. STAT. ANN. § 18A:38-25 (ages 6-15); New Mexico, N. M. STAT. ANN. § 22-12-2 (ages 6-16); New York, N.Y. EDUC. LAW § 3202 (ages 6-16); North Carolina, N.C. GEN. STAT. § 115C-378 (ages 7-16); North Dakota, N.D. CENT. CODE 15.1-20-01 (ages 7-15); Ohio, OHIO REV. CODE ANN. § 3321.01 (ages 6-17); Oklahoma, OKLA. STAT. tit. 56 § 230.66 (ages 6-17); Oregon, OR. REV. STAT. 339.010 (ages 7-17); Pennsylvania, 24 PA. CONS. STAT. § 13-1327 (ages 8-17); Rhode Island, R.I. GEN LAWS § 16-19-1 (ages 7-16); South Carolina, S.C. CODE ANN. § 59-65-10 (ages 7-16); South Dakota, S. D. CODIFIED LAWS § 13-27-1 (ages 7-16); Tennessee, TENN. CODE ANN. § 49-6-3001 (ages 7-16); Texas, TEX. EDUC. CODE ANN. § 25.085 (ages 6-17); Utah, UTAH CODE ANN. § 53A-11-101 (ages 6-17); Vermont, VT. STAT ANN. tit. 16, § 1121 (ages 6-15); Virginia, VA. CODE ANN. § 22.1-254 (ages 5-17); Washington, WASH. REV. CODE § 28A.225.010 (ages 8-17) West Virginia, W. VA. CODE § 18-8-1 (ages 6-15); Wisconsin, WIS. STAT. § 118.15 (ages 6-18); Wyoming, WYO. STAT. ANN. § 21-4-102 (ages 7-15); and the District of Columbia, D.C. CODE ANN. § 38-202 (ages 5-17.)

Driving

In 41 states, a person must be 18 or older to be issued a driver's licenses free of restrictions and prerequisites. These are Alabama, ALA. CODE § 32-6-7.2; Alaska, ALASKA STAT. § 28.15.031; Arizona, ARIZ. REV. STAT. ANN. § 28-3153; Arkansas, ARK. CODE. ANN. § 27-16-604; California, CAL. VEHICLE CODE § 12512; Connecticut, CONN. GEN. STAT. § 14-36; Delaware, DEL. CODE ANN. tit. 21, § 2707; Florida, FLA. STAT. ANN. § 322.05; Georgia, GA. CODE ANN. § 40-5-22; Hawaii, HAW. REV. STAT. ANN. § 286-104; Illinois, 625 ILL. COMP. STAT. 5/6- 103; Indiana, IND. CODE § 9-24-3-2; Iowa, IOWA CODE 321.177; Kansas, KAN. STAT. ANN. § 8-237; Kentucky, KY. REV. STAT. ANN. § 186.440; Louisiana, LA. REV. STAT. ANN. § 32:405.1; Maine, ME. REV. STAT. ANN. tit. 29-A, § 1302; Maryland, MD. CODE. ANN., TRANSP. I § 16-103; Massachusetts, MASS. GEN. LAWS. ANN. ch. 90, § 8; Michigan, MICH. COMP. LAWS ANN. § 257.308; Minnesota, MINN. STAT. § 171.04; Missouri, MO. ANN. STAT. § 302.060; Nebraska, NEB. REV. STAT. § 60-480; Nevada, NEV. REV. STAT. 483.250; New Hampshire, N.H. REV. STAT. ANN. § 263:16; New Jersey, N.J. STAT. ANN. § 39:3-10; New Mexico, N.M. STAT. ANN. § 66-5-5; New York, N.Y. VEH. & TRAF. LAW § 502; North Carolina, N.C. GEN. STAT. § 20-9; Ohio, OHIO REV. CODE. ANN. § 4507.07; Oklahoma, OKLA. STAT. tit. 47, § 6-103; Oregon, OR. REV. STAT. § 807.060; Pennsylvania, 75 PA. CONS. STAT. § 1503; Rhode Island, R.I. GEN. LAWS § 31-10-6; South Dakota, S.D. CODIFIED LAWS § 32-12-6; Tennessee, TENN. CODE ANN. § 55-50-312; Texas, TEX. TRANSP. CODE ANN. § 521.204; Utah, UTAH CODE ANN. § 53-3-204; Vermont, VT. STAT. ANN. tit. 23, § 606; West Virginia, W. VA. CODE § 17B-2-3; and Wisconsin, WIS. STAT. § 343.06. Virginia issues unrestricted driver's licenses only to persons age 19 or older and the District of Columbia issues unrestricted licenses only to persons 21 years or older. *See* VA. CODE ANN. § 46.2-334.01; D.C. CODE ANN. § 50-1401.01.

Four states (Colorado, Idaho, Mississippi and South Carolina) issue unrestricted driver's licenses only to persons age 17 or older. *See*, COLO. REV. STAT. § 42-2-105.5; IDAHO CODE § 49-303; MISS. CODE. ANN. § 63-1-23; and S.C. CODE ANN. § 56-1-40. Finally, four states (Montana, North Dakota, Washington and Wyoming) issue unrestricted licenses only to persons age 16 and older. *See*, MONT. CODE ANN. § 61-5-105; N.D. CENT. CODE § 39-06-03; WASH. REV. CODE § 46.20.031; and WYO. STAT. ANN. 31-7-108.

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